Nos. 15,231 and 15,232

IN THE

United States Court of Appeals

For the Ninth Circuit

CITY OF ANCHORAGE, a Municipal Corporation, *Appellant*, vs. CHUGACH ELECTRIC ASSOCIATION, INC., *Appellee*.	No. 15,231
ANCHORAGE INDEPENDENT SCHOOL DISTRICT, *Appellant*, vs. CHUGACH ELECTRIC ASSOCIATION, INC., *Appellee*.	No. 15,232

Appeal from the District Court for the District of Alaska, Third Division.

BRIEF FOR APPELLEE CHUGACH ELECTRIC ASSOCIATION, INC.

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JURISDICTION.

The question of jurisdiction is correctly stated in Appellant's Brief.

(2) In regarding evidence of other alleged misrepresentations as tending to prove that appellant made the misrepresentation charged in the indictment.

I.

THE TRIAL COURT BASED ITS JUDGMENT UPON THE ERRONEOUS PROPOSITION THAT CARELESSNESS WOULD JUSTIFY CONVICTION.

This Court quotes certain language in the "Judgment and Commitment," filed June 26, 1956 (T. 20-22), as indicating that the trial court made a finding that appellant had wilfully (i.e. consciously) made the representation referred to in the indictment. But a month previously, on May 28, 1956, the trial court had filed a formal "Judgment" (T. 14-15) which reads as follows:

"Judgment

"In accordance with the findings of fact and conclusions of law contained in the ruling on motions for judgment of acquittal filed herein, it is the judgment of the court that the defendant is guilty as charged in counts one and two of the indictment.

"Further, it is ordered that the defendant be referred to the Probation Office for a presentence report, and the time of sentence is tentatively set for June 26, 1956, at 2 p.m. in the United States Courthouse in Sacramento, California."

This Judgment, filed on May 28, was the determination and adjudication of guilt, and the subsequent

"Judgment and Commitment" consisted of the pronouncing of sentence plus a mere *recital* of what had *previously* taken place (determination of guilt and imposition of sentence being separate steps in the proceeding—Cf. *Pollard v. United States,* 77 S. Ct. 481, 484, 352 U.S. 360, 1 L. Ed. 393, 397).

The "Judgment and Commitment" filed on June 26, 1956 is in the form suggested in the specimen forms promulgated with the Federal Rules of Criminal Procedure and contains the recitals prescribed in those rules. But, as this Court has said in *Sanders v. Johnston,* 165 F. 2d 736 (cert. den. 68 S. Ct. 1328, 334 U.S. 829, 92 L. Ed. 1757, rehearing denied 69 S. Ct. 7, 335 U.S. 838, 93 L. Ed. 390):

> "Rule 32(b) prescribes a recital in the judgment of the several steps taken by the court during the progress of a case from the entry of a plea to the pronouncement of sentence. Such a recital in the judgment would be prima facie evidence that the steps set forth therein actually took place, but it does not follow that a failure to make such a recital in the written judgment nullifies steps which did in fact occur."

Conversely, in the case at bar the mere recital in the June 26 "Judgment and Commitment" of the several steps which had *theretofore* been taken in the case, could not nullify the fact that the adjudication of guilt *which the court had already made* and filed on May 28th *was expressly based on the findings of fact and conclusions of law contained in the ruling of the same date (T. 5-14) on the motions for judgment of ac-*

ion in emphasizing the following portion of the Act in question:

> "There shall be assessed, collected and paid a tax upon all real property and improvements and personal property in the Territory." (TR 15231, Page 25.)

We submit, therefore, that in view of the language employed in Chapter 10, SLA, 1949, the Legislature intended that the exemptions provided for therein should apply to municipalities, school districts and other political subdivisions. To hold otherwise would, in effect, place the Territory in the position of declaring a public policy for the protection and encouragement of various groups, organizations and types of business from the taxing power of the Territory and yet remove from them that protection and encouragement insofar as cities, school districts and other political subdivisions are concerned. It is obvious that the Legislature had no such intention.

The exemption upon which the Court rendered its decision and upon which Appellee herein relies is that contained in Chapter 10, SLA, 1949, Subsection 6(b) as follows:

> "Property of the United States or the Territory of Alaska or any municipal corporation, independent school district and association operating utilities under arrangement with the Rural Electrification Administration." (Appellants' Brief, Appendix, Page vi.)

These exemptions were re-enacted by Chapter 33, SLA, 1953.

While it might be true that the language employed under this exemption provision may have been couched in more precise language, nevertheless, the obvious intent of the Legislature was to protect from taxation those associations in the utility field operating under arrangement with the Rural Electrification Administration. There is no question whatsoever but what this applies to the Appellee herein. The interpretation sought by Appellants of the exemptions above set forth would, in effect, permit the taxation of city property by school and public utility districts, taxation of school property by the public utility districts and the city, and the taxation of all of these by the Territory of Alaska, leading to an absurdity, and bring about a chaotic taxing condition in the Territory. It is also helpful to resort to the history of the enactment of Chapter 33, SLA, 1953, as reflected by the legislative journal, in arriving at the true intent of the Legislature. The Act in question originated as House Bill No. 43, by Messrs. Boardman and Estaugh, entitled "An Act authorizing and empowering Municipalities, School Districts and Public Utility Districts to classify property for the purpose of taxation and to grant exemptions to certain classes of property; and declaring an emergency." (Page 170, Journal of the House, 1953.) This Act was referred to the Committee on Municipal Affairs. Said bill was referred back to the House by the Committee on Municipal Affairs with the recommendation that it do pass, with the following amendments:

> Strike the title and insert in lieu thereof: "An Act authorizing and empowering Cities, Munici-

palities, School Districts, Public Utility Districts and other taxing units to classify property for the purpose of taxes; and granting exemptions to certain classes of property; making exemptions granted and classifications made under Chapter 10, Session Laws of Alaska, 1949, binding upon such taxing units; and declaring an emergency."

Strike Section 3 and insert in lieu thereof: "Section 3: All exemptions granted in whole or in part and all classifications heretofore made under the provisions of Section 6, Chapter 10, Session Laws of Alaska, 1949, shall remain in full force and effect upon the terms and for the periods granted, and shall be binding upon the Territory and all Cities, Municipalities, School Districts, Public Utility Districts and other taxing units in which the property which is the subject of classification or exemption is situated, and the exemptions granted or classifications so made shall apply to all taxes levied and affixed by the City, Municipality, School District, Public Utility District, or other taxing units where the property is situated as fully as though they had been granted or made under this Act. The purpose and intent of this Section is to carry into practical effect all classifications made and exemptions granted under the provisions of Chapter 10, Session Laws of Alaska, 1949." (Page 210, Journal of the House, 1953.)

The recommendations of the Committee on Municipal Affairs were adopted and the bill passed unanimously in its amended form. (Page 215, Journal of the House, 1953.) This bill, with minor changes not here germane, was passed by the Senate and ultimately approved by

the Governor. An examination of both the change in the title and in Section 3 is of considerable interest in determining the intent of the Legislature.

The reference by Appellants to Chapter 38, SLA, 1949, is of little assistance in determining the issues of this case for it will be noted that Subsection Ninth of Section 16-1-35, ACLA, 1949, is a verbatim repetition of said Section Ninth. The balance of the law provides for a consumers' sales tax and referendum and could in no way be construed as affecting the provisions of Chapter 10, SLA, 1949. A close examination of Chapter 33, SLA, 1953, leaves no doubt but what the exemptions set forth therein were to apply to not only the Territory but to all cities, municipalities, school districts, public utility districts and other taxing units within the Territory. The only intent that can be drawn from the provisions of said Act and as so announced by the 1953 Legislature is to carry into practical effect all classifications made and exemptions granted under the provisions of Chapter 10, SLA, 1949. By using the language that it employed, the 1953 Legislature placed the same construction upon the exemptions granted in Chapter 10, SLA, 1949, as that made by the District Court.

II.

THE DISTRICT COURT FOR THE THIRD DIVISION OF THE TERRITORY OF ALASKA DID NOT COMMIT ERROR IN FINDING THAT THE CHUGACH ELECTRIC ASSOCIATION HAD BEEN GRANTED AN EXEMPTION FROM ALL SCHOOL AND MUNICIPAL TAXES.

It is submitted that the exemption claimed by the Chugach Electric Association is so plainly evident by the statutes that no construction is really necessary. Appellants go to great length in discussing the classifications and the part played by the Tax Commissioner under Subsection 6(h) of Chapter 10, SLA, 1949. It is difficult to understand why Appellants have found it necessary to go into such detail in discussing this particular provision of the aforesaid law inasmuch as Appellee has never contended, does not now contend, nor did the Court rule that the exemptions applied to Chugach Electric Association were based on that particular subsection. On the contrary, the District Court agreed with Appellee herein that the applicable provision of the law was contained in Section 6(b) of Chapter 10, SLA, 1949, as re-enacted by Chapter 33, SLA, 1953. It will be noted that the language used in said subsection is mandatory, self-executing, and does not require any action on the part of the Tax Commissioner whatsoever. Section 3 of Chapter 33, SLA, 1953 (Appellants' Brief, Page 27) incorporated all of the exemption provisions in Chapter 10, SLA, 1949, which provided, among other things, that the exemptions should be binding upon not only the Territory but all other taxing units in which the property is situated. The Legislature, un-

doubtedly in an effort to prevent any erroneous construction or interpretation, states specifically the intent of the particular subsection involved as follows:

> "The purpose and intent of this section is to carry into practical effect all classifications made and exemptions granted under the provisions of Chapter 10, SLA, 1949."

It is significant to note here that this particular subsection is separate and distinct from the sections pertaining to incentive exemptions to industrial, commercial and business enterprises. It is quite obvious from a reading of the statute that the Legislature had a two-fold purpose in mind; (1) to provide for exemptions that would encourage and promote new enterprise in the Territory; and (2) to protect and foster a healthy climate for all classes of property coming within the provisions of Section 6(b), SLA, 1949. The Legislature could not have more clearly expressed its desire to exempt the property here in question. By using the language it employed in enacting Chapter 33, SLA, 1953, the Legislature obviously intended to include all of the exemptions contained therein. That the provisions contained in Section 6(b) are self-executing and mandatory is conceded by Appellants. (Appellants' Brief, Page 31.) It is self-evident that the Appellants have arrived at an erroneous conclusion in contending that the intent of the Legislature was to exempt only that property which had been classified and determined by the Tax Commissioner. Appellants are certainly inconsistent in contending that Section 3 of Chapter 33, SLA, 1953, preserved

and extended the exemptions authorized by the Tax Commissioner, and on the other hand, did not preserve and extend the other exemptions contained therein. Appellants attempt to fortify their erroneous conclusion by further asserting that the Appellee Association has not made an application to the local taxing unit nor been granted a tax exemption by the Tax Commissioner. This has been discussed by Appellee previously but, at the cost of repetition, may it once again be emphasized that the Appellee herein has never contended that it was relying upon those particular provisions of the tax exemption statute but rather upon the mandatory and self-executing provisions declaring the property of Appellee exempt.

It is conceded, as stated by Appellants, that as a general proposition reference by a legislative act to a repealed law as supplementary or explanatory has been regarded as an absurdity. However, such a broad statement of principal should be and has been qualified. A repeated statute may be revived where such effect clearly appears to have been the intent of the Legislature. (50 *AmJur,* Page 574.) The 1953 Legislature in effect re-enacted the exemption provisions of Chapter 10, SLA, 1949. The re-enactment of a statute which has been repealed invalidates the previous repeal and restores the statute to effective operation. *(Sutherland, Statutory Construction,* Page 513.) It is fundamental construction that sections and acts in pari materia and all parts thereof should be construed together and compared with each other, and reference may be made to earlier statutes on the sub-

ject which are regarded in pari materia with the later statute. (50 *AmJur,* Page 354.) It is further a primary rule of construction that in the interpretation of statutes the legislative will is the all-important or controlling factor and, as has been frequently stated, the intention of the Legislature constitutes the law so that the duty of the Court is to ascertain and declare the intention of the Legislature and to carry such intention into effect to the fullest degree. To have adopted the construction suggested by Appellants would be, in effect, to nullify and defeat the intention of the Legislature, which would be contrary to all rules of construction. (50 *AmJur,* Page 200.) When the plain language of Chapter 33, SLA, 1953, is considered, together with the rules of construction aforementioned, the District Court could have arrived at no other conclusion than that it was the intention of the Legislature to exempt as a matter of public policy that property coming within the provisions of Section 6(b), Chapter 10, SLA, 1949. A judicial construction should be in keeping with the natural and probable legislative purpose and avoid conflict and harmonize with the applicable provisions of the law on the subject, if possible. (Vol. 16, *McQuillin, Municipal Corporations,* Page 39.) There certainly was no duty on the Legislature to spell out each exemption contemplated by Chapter 33, SLA, 1953, when their manifest intention was to re-enact the exemptions contained in Chapter 10, SLA, 1949.

The scope and purview of a statute is frequently considered by the Court in its interpretation, and such

interpretation is to render such statute consistent or in conformity with its general scope or purview. It can be gathered from the language of Chapter 33, SLA, 1953, that its general scope and purview was not only to afford incentive to new industry but to encourage and foster associations operating utilities under arrangement with the Rural Electrification Administration.

It is conceded that ordinarily statutory exemptions must be resolved against the taxpayer. Nevertheless, such strict construction must be considered in light of another rule of construction as applied to municipal corporations, for municipal corporations, unlike a sovereign state, possess no inherent power of taxation, and the exercise of such power is dependent upon legislative or constitutional grant, and authorization to impose taxes by cities is strictly construed against said city. *(Fisher v. City of Pittsburgh,* 112 Atlantic 2d 814) *(City of Miami v. Kayfetz,* 30 Southern 2d 521.) So that any attempt to exercise a taxing power as by levying an ad valorem tax upon property in a municipality which is found not to be within the powers granted to a municipality is ultra virus and void. (38 *AmJur,* Page 68.) And it has been held that a city council is without power to levy a tax on exempt property. *(East Lincoln Lodge No. 210, AF and AM v. City of Lincoln,* 268 Northwest 91.) Such grant of power is to be strictly construed and it must be made to clearly appear that such authority vested in a municipality is free from any doubt, and where doubt exists, it must be resolved against the municipality. (38 *AmJur,* Page 72) (Vol. 16, *McQuillin,*

Municipal Corporations, Page 15.) An examination of the opinion of the District Court will reflect that he considered and weighed the two rules of construction above set forth. (TR 15231, Page 29.) Such statutes should be given a reasonable construction without bias or prejudice against either the taxpayer or the state or municipality to carry out the intention of the Legislature, and further the important public interest which such statutes subserve. (Vol. 16, *McQuillin, Municipal Corporations,* Page 39.) The District Court in considering this matter undoubtedly took judicial notice of the situation existing in Alaska with reference to the generation and distribution of electrical power, for it is a matter of common general knowledge. For without the assistance of the Rural Electrification Administration and co-operatives operating thereunder, it would undoubtedly be extremely difficult, if not impossible, for the rural areas in Alaska to receive this vital service. (20 *AmJur,* Page 48.) Such matters of common knowledge may receive the recognition in the Courts of both original and appellate jurisdiction that they would have received if formally proved and made a part of the record. This rule is of practical value in the law of appeal for the missing links in the testimony often may be supplied by judicial knowledge. (20 *AmJur,* Page 54.) This proposition is not without precedent for in *Arkansas Valley Co-operative Rural Electric Co., et al., v. Elkins,* 141 Southwestern Reporter 2d, Page 538, the Court states at Page 540:

> "We take a judicial notice of the Act of Congress, May 20, 1936, creating an agency of the United States to be known as the Rural Electrifi-

> cation Administration, Title 7, United States Code Annotated, 901. Under this Act, great sums of money were set aside with which to make loans to local co-operative agencies throughout the nation to enable rural residents to secure the conveniences afforded by electrical service, a privilege that had theretofore been denied to them on account of the prohibitive cost."

The expression by the Court in the above case is fully applicable to the case before us.

We submit that the District Court, being fully aware of this situation, arrived at the correct conclusion that as a matter of public policy the Legislature intended to assist and foster co-operatives in Alaska who were engaged in electrical distribution and generation under arrangements with the Rural Electrification Administration, and that they manifested such intent by making such co-operatives exempt from taxation by either the Territory or its political subdivisions.

In attempting to defeat the obvious intent of the Legislature, Appellants advanced the ingenious argument that Chapter 10, SLA, 1949, and the exemptions contained thereunder applied only to the Territory, and in the same breath Appellants contend that the Territory, even though it had lost its authority to tax property and declare exemptions by virtue of the repeal of said Act, that the exemptions subsequently provided for in Chapter 33, SLA, 1953, were also directed only at the Territory. If the exemptions set forth in Chapter 10, SLA, 1949, applied solely to the

Territory, why then would the exemptions be re-enacted in Chapter 33, SLA, 1953, after the prior law had been repealed? The only logical conclusion and the one at which the Court arrived is that the exemptions were meant to apply uniformly to municipalities and other political subdivisions, as well as the Territory of Alaska, insofar as the property tax is concerned.

III.

THE EXEMPTION CLAIMED BY CHUGACH ELECTRIC ASSOCIATION, INC., APPLIED TO ALL PROPERTY TAXES LEVIED IN THE TERRITORY AND AFFECTED ALL TAXING UNITS WITHIN SAID TERRITORY.

While it appears that the argument presented by Appellants in this instance is for the most part repetitious, it is felt that some answer is required, which will be treated as briefly as possible. Appellee agrees with Appellants that Chapter 10, SLA, 1949, was repealed by the 1953 Legislature by the enactment of Chapter 22, SLA, 1953, and Appellee further agrees with Appellants that the exemptions set forth in Section 6, Chapter 10, SLA, 1949, contain a number of self-executing exemptions. Here, once again, however, the Appellants are persisting in the error of assuming that the District Court ruled as it did and that Appellee relied upon Section 6(h) of the above Act. This they quite specifically state as follows:

> "Included in the repeal of Chapter 22, SLA, 1953, is Section 6(h) of Chapter 10, SLA, 1949, which Appellee relies upon to support the exemption claimed." (Appellants' Brief, Page 43.)

On the contrary, as has been stated before, the Court based its decision upon Subsection 6(b) of Chapter 10, SLA, 1949, as re-enacted in Chapter 33, SLA, 1953. There certainly can be no question but what the Appellee herein came within the purview of said subsection. It will be further noted that Chapter 22, SLA, 1953, repealing Chapter 10, SLA, 1949, and Chapter 33, SLA, 1953, were enacted by the same Legislature within a few days of each other. It is obvious that the Legislature, being aware of the omissions with reference to exemptions under Chapter 22, SLA, 1953, hastened to cure the matter by the enactment of Chapter 33 of the same session. It is a well-established principle of construction that the enactment by a legislative body of two or more acts upon the same subject matter creates a presumption that the acts which were born of the same legislative mind were actuated with the same policy and were intended to coexist to attain by their mutual operation the object of the legislation. *(Sutherland, Statutory Construction,* Page 483.) These two Acts, together with Chapter 10, SLA, 1949, are Acts in pari materia and it must be assumed that the Legislature was considering the implications of the entire matter of property tax legislation when it enacted the above laws. Having once pre-empted the field of property taxation by virtue of the enactment of Chapter 10, SLA, 1949, the Legislature dealt with the entire subject matter, including therein tax legislation for schools and other purposes, and dealt with the entire property tax question both within the Territory and its political subdivisions, including exemptions both permissive and mandatory.

In summary, it can be stated that the Legislature was not only concerned with incentives for new industry but that it was also concerned with fostering and assisting co-operatives engaging in generation and distribution of electric energy, which were then and now are of such great importance to the Territory.

IV.

THE DISTRICT COURT FOR THE THIRD DIVISION, TERRITORY OF ALASKA, DID NOT ERR IN DISMISSING THE PETITIONS FILED BY THE CITY OF ANCHORAGE AND THE ANCHORAGE INDEPENDENT SCHOOL DISTRICT AS TO CHUGACH ELECTRIC ASSOCIATION, INC.

This matter was submitted to the District Court on the basis of the pleadings, which consisted of the petitions by the City of Anchorage and the Independent School District, and the objections supported by the affidavit of Marlin Stewart and motion to dismiss by Appellee. Paragraph 3 of the motion to consolidate and to dismiss filed by Appellee sets forth as a basis for such dismissal that the petitions failed to state a claim against Chugach Electric Association, Inc., upon which relief can be granted. (TR 15231, Page 17.) In its objections to the tax and proposed order of sale, Appellee further moved to dismiss on the grounds that the Court lacked jurisdiction, and objected to the validity of the tax in question on the basis that Appellee was exempt from said taxation as a matter of law. The motion to dismiss performed substantially the same function as the old common law general demur-

rer and is the usual and proper method of testing the legal sufficiency of the complaint. For the purposes of the motion, the well-pleaded material allegations of the complaint are taken as admitted, *(Moore's Federal Practice,* 2nd Edition, Volume 2, Page 2244) and a dismissal will lie if it appears that the complaint is without merit or a disclosure of some fact is made which will necessarily defeat the claim. If it appears that plaintiff is entitled to no relief under any state of facts which could be provided in support of the claim, said complaint should be dismissed. *(Moore's Federal Practice,* 2nd Edition, Volume 2, Page 2245) (Citing *Robbins v. Zabarski,* 44 Federal Supplement 867, holding that the question whether plaintiff was within a class exempted from the Fair Labor Standards Act could be determined on motion to dismiss where the facts appeared on the face of the complaint.) The same general principle was followed in the case of *Ballaine v. Alaska Northern Railway Company (United States intervening)* reported in 259 Federal 183, decided by this Court in 1919. The foregoing case involved a demurrer filed by the United States on the basis of which the Court dismissed the complaint of Ballaine against the Alaska Northern Railway Company, upon the grounds that Ballaine's action was one sounding in tort and that the real party defendant was the United States, and that there was no jurisdiction to proceed with the cause. The District Court in the instant case was in a position to decide as a matter of law, as reflected by the pleadings, that the Chugach Electric Association was exempt and that therefore the attempt by the Anchorage Inde-

pendent School District and the City of Anchorage to impose taxes on Appellee was null and void and the petitions subject to dismissal without requiring a hearing on the merits.

It does not appear from the opinion of the District Court that the Court entertained any doubt as to the exemption claimed by Chugach Electric Association, and the mere fact that the statute might be couched in better language does not reflect such doubt, for the Court, without hesitation, declared the true intent of the Legislature. Both the affidavit of Marlin Stewart and the other pleadings filed by Appellee, which, incidentally, were not denied by Appellants herein, make it abundantly clear that the Chugach Electric Association was qualified under the exemption as an association operating utilities under arrangement with the Rural Electrification Administration.

Appellants seemed to take exception to the use of the word "arrangements" by utilizing the same (Appellants' Brief, Page 45) and concluded therefrom that the application of the exemption in question would require a hearing and could not be determined on a motion to dismiss.

The word "arrangements" which could, perhaps, have been spelled out in a more precise manner in the Act in question, has previously received judicial construction. *(People v. American Ice Company,* 120 NYS 443.) Page 449 in the above case defines the word "arrangements" as follows:

> "Disposition of measures for the accomplishment of a purpose; preparation for successful

> performance * * * I think these definitions of the word 'arrangements' are sufficient to carry to your minds what was intended by the Legislature when it passed the Act."

There is certainly no question but what the Chugach Electric Association and the Rural Electrification Administration, as manifested by the pleadings and other evidence before the Court, constituted an arrangement between the two.

It is highly doubtful that this Court will consider the balance of the argument by Appellants with reference to Chugach Electric Association being a government instrumentality and on the further ground that the Appellee's property is located wholly within the Alaska Terminal Reserve and therefore not taxable. We submit that these arguments are immaterial inasmuch as the Court did not consider them in its decision. However, inasmuch as Appellants have submitted such arguments to the Court, Appellee will make an attempt to briefly answer the same without belaboring the matter. It certainly will not be denied that the Chugach Electric Association is operated by virtue of an agreement entered into with the Rural Electrification Administration under the provisions of Title 7, USCA 901, et seq. It is further true that the Chugach Electric Association by virtue of several million dollars loaned to it by the Rural Electrification Administration executed a mortgage to the government agency. In order to obtain said loan, the Administrator of the Rural Electrification Administration was required by law under Title 7, USCA, Section

904, to find and certify that in his judgment the security for said loans was reasonably adequate, and that the loans would be repaid within the time agreed. The period set forth for repayment under the Act is thirty-five years, bearing two percent interest. In order to protect the investment of money advanced by the United States, the Administrator is required to exercise considerable supervision over the operation of the co-operative. He must approve the appointment of any consulting engineer hired by the co-operative; he must approve the plans, specifications, material and equipment; any contracts with third parties must also be approved; the co-operative is required to submit a periodical financial report and their books are subject to inspection and audit by the Administrator. (Title 6, *Code of Federal Regulations,* 1949, Page 87.) Considering the extent to which the federal Act and regulations have gone in protecting the government investment, and the relationship existing between the government agency and Chugach Electric Association, would, it is submitted, constitute the Chugach Electric Association under the circumstances an instrumentality of the government and not subject to taxation. (51 *AmJur,* Page 279.) The Supreme Court, in similar instances, have held this to be true. The Supreme Court used the following pertinent language in the case of *Federal Land Bank of St. Paul v. Bismarck Lumber Company,* 314 US 95, 102:

> "The National Farm Loan Association, the local co-operative corporations of borrowers thereto in which the land banks make loans to individuals are also government agencies."

The cases cited by Appellants under this particular principle are readily distinguished from the case at bar.

It has not been denied by Appellants that the Alaska Railroad Terminal Reserve is property owned by the United States of America. It is well settled that a state and its subordinate taxing units are without power to subject to taxation the property of the federal government or the means, instrumentalities and agencies thereof which it employs to carry out its proper functions unless Congress expressly confers a right upon the state to tax such agencies, instrumentalities or property. (51 *AmJur,* Page 279) *(McQuillin, Municipal Corporations,* 3rd Edition, Volume 16, Page 135.) This is even more true of a territory on the theory that a territory or dependency may not tax its sovereign. (51 *AmJur,* Page 92.) In addition to the foregoing, there is a specific prohibition against imposing any tax upon the property of the United States, contained in Section 9 of the Organic Act. We find this same provision recited in Section 6(b) of Chapter 10, SLA, 1949.

CONCLUSION.

The Distric Court was correct in dismissing the petitions as to Chugach Electric Association, Inc., and in holding that as a basis for such dismissal that said Association came within the exemptions under Section 6(b), Chapter 10, SLA, 1949, as re-enacted by Chapter 33, SLA, 1953. To hold that such exemptions did

not apply to local taxing powers as contended for by Appellants would be, in effect, to ignore the manifest intent of the Legislature. A contrary decision would render the entire intent of the legislation so far as property taxing in the Territory is concerned a nullity. It would ignore the general scope and purview of the statutes involved and render ineffective a desire on the part of the Legislature to not only afford incentives to new industry but also ignore the general policy of fostering, encouraging and assisting electrical co-operatives in their struggle to bring electrical energy to the citizens in the rural areas of Alaska. The decision of the District Court should be sustained.

Dated, Anchorage, Alaska,
May 21, 1957.

Respectfully submitted,
J. Earl Cooper,
Attorney for Appellee Chugach Electric Association, Inc.